

DEC 20 1979

MICHAEL ROBAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1979

No. 79-136

LUTRELLE F. PARKER, Acting Commissioner of  
Patents and Trademarks, *Petitioner*,

v.

MALCOLM E. BERGY, et al., *Respondents*.

LUTRELLE F. PARKER, Acting Commissioner of  
Patents and Trademarks, *Petitioner*,

v.

ANANDA M. CHAKRABARTY, *Respondent*.

On Writ of Certiorari to the  
United States Court of Customs and Patent Appeal

MOTION TO DISMISS AND VACATE AS TO  
RESPONDENTS MALCOLM E. BERGY, ET AL.

HAROLD C. WEGNER

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*Attorneys for Respondents  
Malcolm E. Bergy, et al.*

December 20, 1979



United States Department of Justice  
Office of the Solicitor General  
Washington, D.C. 20530

RECEIVED

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

January 8, 1980

Michael Rodak, Jr., Esquire  
Clerk  
Supreme Court of the United States  
Washington, D. C. 20543

Re: Sidney A. Diamond, Commissioner of Patents  
& Trademarks v. Malcolm E. Bergy, et al.  
No. 79-136

Dear Mr. Rodak:

A motion to dismiss and vacate has been filed by respondents Bergy, et al., in this case. That motion reports that the patent application involved in the Bergy case has been formally abandoned, and thus that case has become moot. It accordingly asks this Court to vacate the Bergy judgment, and remand that case to the Court of Customs and Patent Appeals with directions to dismiss the appeal as moot.

We agree with this proposed disposition of the case; since the abandonment of the patent application has mooted the case, review by this Court of the Court of Customs and Patent Appeals' judgment is no longer appropriate. Cf. Dann v. Noll, 434 U.S. 875 (1977). This action will, of course, have no effect on the status of the companion case, Diamond v. Chakrabarty, which remains pending in No. 79-136.

Sincerely,

*Wade H. McCree, Jr.*  
Wade H. McCree, Jr.  
Solicitor General

IN THE  
Supreme Court of the United States

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LUTRELLE F. PARKER, Acting Commissioner of  
Patents and Trademarks, *Petitioner*,

v.

MALCOLM E. BERGY, et al., *Respondents*.

LUTRELLE F. PARKER, Acting Commissioner of  
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v.

ANANDA M. CHAKRABARTY, *Respondent*.

MOTION TO DISMISS AND VACATE AS TO  
RESPONDENTS MALCOLM E. BERGY, ET AL.

Respondents Malcolm E. Bergy et al, by filing an Amendment (Appendix A) with the United States Patent and Trademark Office on December 19, 1979, have abandoned the subject matter of this appeal insofar as it applies to those respondents.

In view of the abandonment of the Bergy et al. subject matter, the controversy is now moot as to those respondents. See *Brenner v. Hofstetter*, 389 U.S. 5 (1967). Respondents Bergy et al therefore move that the judgment (insofar as it applies to those respondents) be vacated and the case remanded to the United States Court of Customs and Patent Appeals with directions to dismiss the appeal to that court as moot.

Respectfully submitted,

HAROLD C. WEGNER  
CHARLES A. WENDEL

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Arlington, Virginia 22202  
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*Attorneys for Respondents  
Malcolm E. Bergy et al.*

December 20, 1979

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## APPENDIX A

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of  
MALCOLM BERGY ET AL  
Serial No.: 477,766  
Filed: June 10, 1974  
For: PROCESS FOR PREPARING LINCOMYCIN

Attention: Solicitor  
By Hand Delivery

## AMENDMENT

Hon. Commissioner of Patents and  
Trademarks  
Washington, D.C. 20231

Sir:

Kindly amend the above captioned application as follows:

### IN THE CLAIMS:

Cancel claim 5.

## REMARKS

Via the above amendment applicants have abandoned the subject matter of the pending appeal at the Supreme Court, *Parker v. Bergy*. With the cancellation of all subject matter in

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controversy at the Supreme Court, the application is in condition for allowance.

Respectfully submitted,  
MALCOLM BERGY ET AL

by .....

John Kekich  
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Kalamazoo, Michigan 49001